

## 1 HOUSE BILL NO. 232

2 INTRODUCED BY P. CONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING REQUIREMENTS THAT STATE AGENCIES  
5 CONSULT WITH LOCAL GOVERNMENTS WHEN DRAFTING ENVIRONMENTAL IMPACT STATEMENTS;  
6 AMENDING SECTIONS 75-1-201 AND 75-20-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
7 AND A RETROACTIVE APPLICABILITY DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 75-1-201, MCA, is amended to read:

12 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes  
13 and directs that, to the fullest extent possible:

14 (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance  
15 with the policies set forth in parts 1 through 3;

16 (b) under this part, all agencies of the state, except the legislature and except as provided in subsection  
17 (2), shall:

18 (i) use a systematic, interdisciplinary approach that will ensure:

19 (A) the integrated use of the natural and social sciences and the environmental design arts in planning  
20 and in decisionmaking that may have an impact on the human environment; and

21 (B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency  
22 considers alternatives, the alternative analysis will be in compliance with the provisions of subsections  
23 (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency  
24 to be necessary, subsection (1)(b)(iv)(C)(IV);

25 (ii) identify and develop methods and procedures that will ensure that presently unquantified  
26 environmental amenities and values may be given appropriate consideration in decisionmaking, along with  
27 economic and technical considerations;

28 (iii) identify and develop methods and procedures that will ensure that state government actions that may  
29 impact the human environment are evaluated for regulatory restrictions on private property, as provided in  
30 subsection (1)(b)(iv)(D);

- 1 (iv) include in each recommendation or report on proposals for projects, programs, and other major  
2 actions of state government significantly affecting the quality of the human environment a detailed statement on:  
3 (A) the environmental impact of the proposed action;  
4 (B) any adverse environmental effects that cannot be avoided if the proposal is implemented;  
5 (C) alternatives to the proposed action. An analysis of any alternative included in the environmental  
6 review must comply with the following criteria:  
7 (I) any alternative proposed must be reasonable, in that the alternative must be achievable under current  
8 technology and the alternative must be economically feasible as determined solely by the economic viability for  
9 similar projects having similar conditions and physical locations and determined without regard to the economic  
10 strength of the specific project sponsor;  
11 (II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed  
12 alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding  
13 the proposed alternative;  
14 (III) if the project sponsor believes that an alternative is not reasonable as provided in subsection  
15 (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's  
16 determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion,  
17 submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project  
18 sponsor for any of its activities associated with any review under this section. The period of time between the  
19 request for a review and completion of a review under this subsection may not be included for the purposes of  
20 determining compliance with the time limits established for environmental review in 75-1-208.  
21 (IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative  
22 analysis must include the projected beneficial and adverse environmental, social, and economic impact of the  
23 project's noncompletion.  
24 (D) any regulatory impacts on private property rights, including whether alternatives that reduce,  
25 minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this  
26 subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private  
27 property.  
28 (E) the relationship between local short-term uses of the human environment and the maintenance and  
29 enhancement of long-term productivity;  
30 (F) any irreversible and irretrievable commitments of resources that would be involved in the proposed

1 action if it is implemented;

2 (G) the customer fiscal impact analysis, if required by 69-2-216; and

3 (H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the  
4 economic advantages and disadvantages of the proposal;

5 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe  
6 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts  
7 concerning alternative uses of available resources;

8 (vi) recognize the national and long-range character of environmental problems and, when consistent  
9 with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to  
10 maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

11 (vii) make available to counties, municipalities, institutions, and individuals advice and information useful  
12 in restoring, maintaining, and enhancing the quality of the environment;

13 (viii) initiate and use ecological information in the planning and development of resource-oriented  
14 projects; and

15 (ix) assist the environmental quality council established by 5-16-101;

16 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state  
17 official shall consult with and obtain the comments of:

18 (i) any state agency that has jurisdiction by law or special expertise with respect to any environmental  
19 impact involved; ~~and with~~

20 (ii) subject to 75-20-216(2), any local government, as defined in 7-12-1103, that may be directly impacted  
21 by the project. The responsible state official complies with this requirement by inviting the local government to  
22 participate in the public scoping process and, after the scoping process has been completed and before  
23 requesting public comment on the detailed statement, by providing the governing body of the local government  
24 with a written summary of the issues that the responsible state official intends to analyze in the detailed statement  
25 and allowing the local government to submit written comments on the issues being analyzed. If within 30 days  
26 of receiving the written summary the governing body of the local government makes a written request for a  
27 meeting to discuss the summary, the responsible state official or designee shall meet with the governing body  
28 of the local government or its designee. The responsible state official may hold the meeting by electronic means.

29 ~~(iii) shall also consult with and obtain comments from~~ any state agency with respect to any regulation  
30 of private property involved. Copies of the statement and the comments and views of the appropriate state,

1 federal, and local agencies that are authorized to develop and enforce environmental standards must be made  
2 available to the governor, the environmental quality council, and the public and must accompany the proposal  
3 through the existing agency review processes.

4 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use  
5 or permission to act by an agency, either singly or in combination with other state agencies, does not trigger  
6 review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or  
7 unless otherwise provided by law.

8 (2) The department of public service regulation, in the exercise of its regulatory authority over rates and  
9 charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

10 (3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to  
11 subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person  
12 challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement,  
13 a court may not consider any issue relating to the adequacy or content of the agency's environmental review  
14 document or evidence that was not first presented to the agency for the agency's consideration prior to the  
15 agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and  
16 convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal  
17 impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may  
18 not be used as the basis of any action challenging or seeking review of the agency's decision.

19 (b) When new, material, and significant evidence or issues relating to the adequacy or content of the  
20 agency's environmental review document are presented to the district court that had not previously been  
21 presented to the agency for its consideration, the district court shall remand the new evidence or issue relating  
22 to the adequacy or content of the agency's environmental review document back to the agency for the agency's  
23 consideration and an opportunity to modify its findings of fact and administrative decision before the district court  
24 considers the evidence or issue relating to the adequacy or content of the agency's environmental review  
25 document within the administrative record under review. Immaterial or insignificant evidence or issues relating  
26 to the adequacy or content of the agency's environmental review document may not be remanded to the agency.  
27 The district court shall review the agency's findings and decision to determine whether they are supported by  
28 substantial, credible evidence within the administrative record under review.

29 (4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent  
30 with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an

1 environmental review that is being prepared by a state agency pursuant to this part and a federal agency  
2 pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state  
3 agency to comply with the requirements of the National Environmental Policy Act.

4 (5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act  
5 based on parts 1 through 3 of this chapter.

6 (b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing  
7 measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

8 (c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to  
9 modify a proposed project or action.

10 (6) (a) (i) A challenge to an agency action under this part may only be brought against a final agency  
11 action and may only be brought in district court or in federal court, whichever is appropriate.

12 (ii) Any action or proceeding challenging a final agency action alleging failure to comply with or  
13 inadequate compliance with a requirement under this part must be brought within 60 days of the action that is  
14 the subject of the challenge.

15 (iii) For an action taken by the board of land commissioners or the department of natural resources and  
16 conservation under Title 77, "final agency action" means the date that the board of land commissioners or the  
17 department of natural resources and conservation issues a final environmental review document under this part  
18 or the date that the board approves the action that is subject to this part, whichever is later.

19 (b) Any action or proceeding under subsection (6)(a)(ii) must take precedence over other cases or  
20 matters in the district court unless otherwise provided by law.

21 (c) Any judicial action or proceeding brought in district court under subsection (6)(a) involving an equine  
22 slaughter or processing facility must comply with 81-9-240 and 81-9-241.

23 (7) The director of the agency responsible for the determination or recommendation shall endorse in  
24 writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a  
25 determination of significance be made.

26 (8) A project sponsor may request a review of the significance determination or recommendation made  
27 under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an  
28 advisory recommendation to the agency regarding the issue. The period of time between the request for a review  
29 and completion of a review under this subsection may not be included for the purposes of determining compliance  
30 with the time limits established for environmental review in 75-1-208."

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2           **Section 2.** Section 75-20-216, MCA, is amended to read:

3           **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

4           (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

5               (a) the application is in compliance and is accepted as complete; or

6               (b) the application is not in compliance and shall list the deficiencies. Upon correction of these  
7 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing  
8 that the application is in compliance and is accepted as complete.

9           (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this  
10 section, the department shall commence an evaluation of the proposed facility and its effects, considering all  
11 applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as  
12 provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful  
13 existing studies and reports submitted by the applicant or compiled by a state or federal agency. If an application  
14 for a transmission line or a pipeline requires the department to prepare a detailed statement pursuant to  
15 75-1-201(1)(b)(iv), the department and other agencies issuing the environmental impact statement comply with  
16 their duty under 75-1-201(1)(c)(ii) to consult with local governments that are directly impacted by consulting with  
17 only local governments through which the transmission line or pipeline passes.

18           (3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within  
19 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit  
20 required under the laws, other than those contained in this chapter, administered by the department. A decision,  
21 opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless,  
22 the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision,  
23 opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a  
24 preliminary decision by the board and pursuant to rules adopted by the department, the department shall provide  
25 an opportunity for public review and comment.

26           (4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following  
27 acceptance of an application for a facility, the department shall issue a report that must contain the department's  
28 studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and  
29 other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis  
30 prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if

1 compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and  
2 operation of a proposed facility. If the application is for a combination of two or more facilities, the department  
3 shall issue its report within the greater of the lengths of time provided for in this subsection for either of the  
4 facilities.

5 (5) For projects subject to joint review by the department and a federal land management agency, the  
6 department's certification decision may be timed to correspond to the record of decision issued by the  
7 participating federal agency.

8 (6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation;  
9 revenue; and public service regulation and the consumer counsel shall report to the department information  
10 relating to the impact of the proposed site on each department's area of expertise. The report may include  
11 opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate  
12 funds obtained from filing fees to the departments making reports and to the office of consumer counsel to  
13 reimburse them for the costs of compiling information and issuing the required report."

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15 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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17 **NEW SECTION. Section 4. Retroactive applicability.** (1) Except as provided in subsection (2), [this  
18 act] applies retroactively, within the meaning of 1-2-109, to detailed statements pursuant to 75-1-201(1)(b)(iv) that  
19 have not been completed before [the effective date of this act].

20 (2) An agency that has submitted a draft detailed statement to the public for comment before [the effective  
21 date of this act] is not required to complete the local government consultation process.

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